

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 995

FINAL READING

Introduced by General Affairs Committee: McDonald, 41, Chairperson;  
Dierks, 40; Dubas, 34; Janssen, 15; Karpisek, 32.

Read first time January 16, 2008

Committee: General Affairs

A BILL

1 FOR AN ACT relating to cemeteries; to amend sections 12-401,  
2 12-806, 12-807, 12-808, 12-810, 12-1202, and 12-1204,  
3 Reissue Revised Statutes of Nebraska, and sections  
4 12-402, 12-805, and 12-1401, Revised Statutes Cumulative  
5 Supplement, 2006; to change and eliminate provisions  
6 relating to cemetery boards, cemetery funds, abandoned  
7 and neglected cemeteries, Indian burial grounds, and  
8 pioneer cemeteries; to harmonize provisions; to repeal  
9 the original sections; and to outright repeal section  
10 12-806.01, Reissue Revised Statutes of Nebraska.

11 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 12-401, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           12-401 The mayor of any city having ~~less~~ fewer than  
4 twenty-five thousand inhabitants, by and with the consent of the  
5 council or a majority thereof, and the ~~chairman~~ chairperson of  
6 the board of trustees of any village, by and with the consent  
7 of the village board or a majority thereof, may appoint a board  
8 of not fewer than three nor more than six members, to be known  
9 as the cemetery board, from among the citizens at large of such  
10 city or village, who shall serve without pay and shall have entire  
11 control and management of any cemetery belonging to such city or  
12 village. Neither the mayor nor any member of the council, nor  
13 the ~~chairman~~ chairperson nor any member of the village board of  
14 trustees may be ~~members~~ a member of the cemetery board. At the  
15 time of establishing said such cemetery board, ~~two~~ approximately  
16 one-third of the members shall be appointed for a term of one year,  
17 ~~two~~ one-third for a term of two years, and ~~two~~ one-third for a  
18 term of three years, and thereafter ~~two~~ members shall be appointed  
19 ~~each year for a term~~ for terms of three years. Vacancies in the  
20 membership of the board other than through the expiration of a term  
21 shall be filled ~~in like manner as regular members of the board are~~  
22 ~~appointed.~~ for the unexpired portion of the term.

23           Sec. 2. Section 12-402, Revised Statutes Cumulative  
24 Supplement, 2006, is amended to read:

25           12-402 (1) The mayor and council or the board of

1 trustees, for the purpose of defraying the cost of the care,  
2 management, improvement, beautifying, and welfare of such  
3 cemeteries and the inhabitants thereof, may each year levy a tax  
4 not exceeding five and two-tenths cents on each one hundred dollars  
5 upon the taxable value of all the taxable property in such city  
6 or village subject to taxation for general purposes. The tax shall  
7 be collected and paid to the city or village as taxes for general  
8 purposes are collected and paid to the city or village. All taxes  
9 collected for this purpose shall constitute and be known as the  
10 cemetery fund and shall be used for the general care, management,  
11 improvement, beautifying, and welfare of such cemetery and the  
12 inhabitants thereof. Warrants upon this fund shall be drawn by the  
13 cemetery board and shall be paid by the city or village treasurer.  
14 The city council or the board of trustees may issue a warrant from  
15 the cemetery fund if a payment is due and the cemetery board is not  
16 scheduled to meet prior to such due date to authorize the warrant.

17 (2) If the mayor and council or the board of trustees  
18 sets aside the proceeds from the sale of lots as a perpetual fund,  
19 the principal of the fund that is attributable to such proceeds, or  
20 attributable to any money which has come to the fund by donation,  
21 bequest, or otherwise that does not prohibit such use, may be used  
22 for the purchase and development of additional land to be used  
23 for cemetery purposes as long as no more than twenty-five percent  
24 of such principal is so used in any fiscal year and no more than  
25 thirty-five percent of such principal is so used in any period of

1 ten consecutive fiscal years.

2 (3) This section does not limit the use of any money that  
3 comes to the city or village by donation, bequest, or otherwise  
4 that is not designated to be credited to the perpetual fund or that  
5 allows greater use for purchase or development of additional land  
6 to be used for cemetery purposes.

7 Sec. 3. Section 12-805, Revised Statutes Cumulative  
8 Supplement, 2006, is amended to read:

9 12-805 The county board ~~may~~ shall expend money from the  
10 general fund of the county for the care and maintenance of each  
11 abandoned ~~and~~ or neglected cemetery. Such amount shall not exceed  
12 one thousand dollars per cemetery in a calendar year. and Indian  
13 burial ground as follows: (1) Not to exceed five hundred dollars  
14 in any one year when the cemetery is totally abandoned; or (2) not  
15 to exceed four hundred dollars in any one year when the cemetery  
16 is partially abandoned. Such care and maintenance may include the  
17 repair or building of fences and annual spraying for the control of  
18 weeds and brush.

19 Sec. 4. Section 12-806, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 12-806 The county board may include in the budget for the  
22 next fiscal year an item for care of abandoned ~~and~~ or neglected  
23 cemeteries as provided in section 12-805.

24 Sec. 5. Section 12-807, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           12-807 The county board shall expend money from the  
2 general fund of the county for the continuous preservation and  
3 maintenance, including mowing, of an abandoned and or neglected  
4 pioneer cemetery when petitioned to do so by thirty-five adult  
5 residents of the county. The county board shall publish notice of  
6 such petition in one issue of the official newspaper published and  
7 of general circulation in the county at least ten days prior to the  
8 day when the matter will be heard by the county board.

9           Sec. 6. Section 12-808, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           12-808 For purposes of sections 12-807 to 12-810, an  
12 abandoned and or neglected pioneer cemetery shall be defined  
13 according to the following criteria:

14           (1) Such cemetery was founded, or the land upon which  
15 such cemetery is situated was given, granted, donated, sold, or  
16 deeded to the founders of the cemetery prior to January 1, 1900;

17           (2) Such cemetery contains the grave or graves of a  
18 person or persons who were homesteaders, immigrants from a foreign  
19 nation, prairie farmers, pioneers, sodbusters, first generation  
20 Nebraskans, or Civil War veterans; and

21           (3) Such cemetery has been generally abandoned and or  
22 neglected for a period of at least ~~twenty~~ five consecutive years.

23           Sec. 7. Section 12-810, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25           12-810 Any county affected by sections 12-807 to 12-810

1 shall provide for at least one mowing annually of such cemetery  
2 each year, and one of such mowings shall occur within a period  
3 of two weeks prior to Memorial Day. Additional mowings shall be  
4 at the discretion of the county board, and each additional mowing  
5 may be subject to a public hearing at which the need for the  
6 additional mowing shall be presented to the county board. Within  
7 five years after maintenance and preservation of such cemetery  
8 is commenced by such county, a historical marker giving the date  
9 of the establishment of the cemetery and a short history of the  
10 cemetery ~~shall~~ may be placed at the site of such cemetery. One  
11 directional marker showing the way to such cemetery may be placed  
12 on the nearest state highway to such cemetery.

13           Sec. 8. Section 12-1202, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           12-1202 The Legislature hereby finds and declares that:

16           (1) Human burial sites which do not presently resemble  
17 well-tended and well-marked cemeteries are subject to a higher  
18 degree of vandalism and inadvertent destruction than well-tended  
19 and well-marked cemeteries;

20           (2) Although existing law prohibits removal, concealment,  
21 or abandonment of any dead human body and provides for the care  
22 and maintenance of abandoned ~~and~~ or neglected Indian cemeteries  
23 ~~and burial grounds~~ and pioneer cemeteries, additional statutory  
24 guidelines and protections are in the public interest;

25           (3) Existing law on cemeteries reflects the value placed

1 on preserving human burial sites but does not clearly provide equal  
2 and adequate protection or incentives to assure preservation of all  
3 human burial sites in this state;

4 (4) An unknown number of unmarked human burial sites  
5 containing the remains of pioneers, settlers, and Indians are  
6 scattered throughout the state;

7 (5) No adequate procedure regarding the treatment and  
8 disposition of human skeletal remains from unmarked graves exists  
9 to protect the interests of relatives or other interested persons;  
10 and

11 (6) There are scientific, educational, religious, and  
12 cultural interests in the remains of our ancestors and those  
13 interests, whenever possible, should be served.

14 Sec. 9. Section 12-1204, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 12-1204 For purposes of the Unmarked Human Burial Sites  
17 and Skeletal Remains Protection Act:

18 (1) Burial goods shall mean any item or items reasonably  
19 believed to have been intentionally placed with the human skeletal  
20 remains of an individual at the time of burial and which can be  
21 traced with a reasonable degree of certainty to the specific human  
22 skeletal remains with which it or they were buried;

23 (2) Human burial site shall mean the specific place  
24 where any human skeletal remains are buried and the immediately  
25 surrounding area;

1           (3) Human skeletal remains shall mean the body or any  
2 part of the body of a deceased human in any stage of decomposition;

3           (4) Indian tribe shall mean any federally recognized or  
4 state-recognized Indian tribe, band, or community;

5           (5) Professional archaeologist shall mean a person having  
6 a postgraduate degree in archaeology, anthropology, history, or  
7 a related field with a specialization in archaeology and with  
8 demonstrated ability to design and execute an archaeological study  
9 and to present the written results and interpretations of such a  
10 study in a thorough, scientific, and timely manner;

11           (6) Reasonably identified and reasonably identifiable  
12 shall mean identifiable, by a preponderance of the evidence, as to  
13 familial or tribal origin based on any available archaeological,  
14 historical, ethnological, or other direct or circumstantial  
15 evidence or expert opinion;

16           (7) Society shall mean the Nebraska State Historical  
17 Society; and

18           (8) Unmarked human burial shall mean any interment by  
19 whatever means of human skeletal remains for which there exists  
20 no grave marker, including burials located in abandoned ~~and~~ or  
21 neglected cemeteries.

22           Sec. 10. Section 12-1401, Revised Statutes Cumulative  
23 Supplement, 2006, is amended to read:

24           12-1401 (1) The Nebraska State Historical Society shall  
25 establish and maintain the Statewide Cemetery Registry. The

1 registry shall be located in the office of the Nebraska State  
2 Historical Society and shall be made available to the public.  
3 The purpose of the registry is to provide a central data bank  
4 of accurate and current information regarding the location of  
5 cemeteries, burial grounds, mausoleums, and columbaria in the  
6 state.

7 (2)(a) Each city, village, township, county, church,  
8 fraternal and benevolent society, cemetery district, cemetery  
9 association, mausoleum association, and any other person owning,  
10 operating, or maintaining a cemetery, pioneer cemetery, abandoned  
11 ~~and or~~ neglected cemetery, ~~Indian burial ground~~, mausoleum, or  
12 columbarium shall register with the Statewide Cemetery Registry.

13 (b) Except as provided in subdivision (c) of this  
14 subsection, the registration shall include the following:

15 (i) The location or address of the cemetery, ~~burial~~  
16 ~~ground~~, mausoleum, or columbarium;

17 (ii) A plat of the cemetery, ~~burial ground~~, mausoleum, or  
18 columbarium grounds, including any lots, graves, niches, or crypts,  
19 if available;

20 (iii) The name and address of the person or persons  
21 representing the entity owning, operating, or maintaining the  
22 cemetery, ~~burial ground~~, mausoleum, or columbarium;

23 (iv) The inception date of the cemetery, ~~burial ground~~,  
24 mausoleum, or columbarium, if available; and

25 (v) If the cemetery, ~~burial ground~~, mausoleum, or

1 columbarium is abandoned, the abandonment date, if available.

2 (c) The information required in subdivision (b) of this  
3 subsection regarding the operation and maintenance of a cemetery,  
4 ~~burial ground~~, mausoleum, or columbarium prior to January 1, 2006,  
5 shall be required only if such information is reasonably available  
6 to the registering entity.

7 (d) The entity owning, operating, or maintaining the  
8 cemetery, ~~burial ground~~, mausoleum, or columbarium may include  
9 information regarding the history of the operation of the cemetery,  
10 ~~burial ground~~, mausoleum, or columbarium.

11 (3) The entity owning, operating, or maintaining a  
12 registered cemetery, ~~burial ground~~, mausoleum, or columbarium shall  
13 update its entry in the registry every ten years following the  
14 initial registration by the entity.

15 Sec. 11. Original sections 12-401, 12-806, 12-807,  
16 12-808, 12-810, 12-1202, and 12-1204, Reissue Revised Statutes  
17 of Nebraska, and sections 12-402, 12-805, and 12-1401, Revised  
18 Statutes Cumulative Supplement, 2006, are repealed.

19 Sec. 12. The following section is outright repealed:  
20 Section 12-806.01, Reissue Revised Statutes of Nebraska.